

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
SHANNON, INC.
D/B/A AL'S MARKET
Powhatan, Virginia**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.34:20 between the State Water Control Board and Shannon, Inc. d/b/a Al's Market, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Al's Market" means Shannon, Inc., d/b/a Al's Market, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Al's Market located at 3440 Anderson Highway, in Powhatan, Virginia.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Al's Market owns and operates a gasoline service station in Powhatan, Virginia. This facility is subject to Code §62.1-44.34:20 of Article 9 (Storage Tanks) of the State Water Control Law.
2. 9 VAC 25-580-140 of the regulations requires that underground piping that routinely contains regulated substances to be monitored for releases. Department records indicate that the piping servicing the 3 USTs on site had not been tested for releases.
3. 9 VAC 25-580-120 of the regulations requires that leak detection test data be provided to the Department upon request. Department records indicate that leak detection test data for the three USTs were not provided as requested.
4. 9 VAC 25-590-10 *et seq.* of the regulations requires that documentation of the financial responsibility demonstration be available for inspection. Department records indicate that the financial responsibility demonstration records were not available for review.
5. On March 8, 2002, DEQ issued Notice of Violation No. 02-03-PRO-501 to Al's Market, Inc. for the above violations.
6. The facility is currently in the process of taking corrective action from a petroleum spill under 9 VAC 25-580-230 *et seq.* Field observations indicate that there may be an on-going release.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.34:20 orders Al's Market, and Al's Market agrees, to perform the actions described in Appendix A of this Order. In addition the Board orders Al's Market, and Al's Market voluntarily agrees to pay a civil charge of \$900 within thirty (30) days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
P.O. Box 10150
Richmond, VA 23240

Al's Market shall include its Federal Identification Number on the check.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Al's Market, for good cause shown by Al's Market, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Al's Market admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Al's Market consents to venue in the Circuit Court of the City of Richmond, VA, for any civil action taken to enforce the terms of this order.
5. Al's Market declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.* and State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Al's Market to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Al's Market shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Al's Market shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Al's Market

shall notify the PRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the Regional Director within twenty-four hours of learning of any condition above, which Al's Market intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Al's Market. Notwithstanding the foregoing, Al's Market agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Al's Market. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Al's Market from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Al's Market voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Al's Market, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of

_____, 2002, by _____, who is
(name)

_____ of Al's Market, Inc.
(title)

Notary Public

My commission expires

Appendix A.

Al's Market shall:

1. Provide leak detection test data for tanks 1, 2, and 3 as requested by January 21, 2003.
2. Provide financial responsibility demonstration records for release detection as required in 9 VAC 25-590-10 *et seq* no later than January 21, 2003.
3. Provide to the Department, a Corrective Action Plan (CAP) for the site by February 4, 2003 accordance with 9 VAC 25-580-290. The CAP will include the CAP Permit and Public Participation (public notice) as required in 9 VAC 25-580-300.
4. Provide all correspondence of the above Appendix A. requirements to:

Ms. Karen Haley-Wingate
Department of Environmental Quality
4949-A Cox Road
Glen Allen, VA 23060